

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

JOHN DALE MCCUISTION  
TX-1334118-R

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DOCKETED COMPLAINT NO.  
07-132

### **AGREED FINAL ORDER**

On this the 17<sup>TH</sup> day of OCTOBER, 2008, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of John Dale McCuiston (Respondent).

In order to conclude this matter, John Dale McCuiston neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

### **FINDINGS OF FACT**

1. Respondent, John Dale McCuiston, is a Texas state certified residential real estate appraiser, holds certification number TX-1334118-R, and has been certified by the Board during all times material to the above-noted complaint case.
2. On or about October 18<sup>th</sup>, 2006, Respondent appraised real property located at 6515 Robin Road, Dallas, Texas ("the property").
3. On or about April 12<sup>th</sup>, 2007, the Complainant, Michael Arties, filed a complaint with the Board. The complaint alleged that the appraisal was used in connection with a mortgage fraud scam.
4. On or about June 6<sup>th</sup>, 2007 the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent's response to the complaint was received.
5. Respondent violated TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property.
  - a) Respondent produced a misleading appraisal report on the property;

- b) Respondent failed to report a prior sale of comparable sale 2 that occurred less than 1 year prior to his appraisal report;
- c) Respondent failed to collect, verify, analyze, reconcile and report the analysis of his cost new of improvements and site value and generally did not employ recognized methods and techniques in his cost approach analysis;
- d) Respondent used inappropriate methods or techniques in his sales comparison approach analysis and failed to identify, analyze and report comparable sales data adequately by failing to select appropriate comparable sales and omitting more appropriate ones that were readily available in the immediate neighborhood, and not addressing or adjusting for significant issues with regard to site value, age and other attributes for the comparable sales that he did use;
- e) Respondent failed to analyze all agreements of sale for the property and did not analyze the prior listing history of the property and its impact on value; and,
- f) Respondent's report contained substantial errors of commission or omission as noted above which negatively impacted the credibility of his report on the property.

## CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.
2. Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a): USPAP Supplemental Standards Rule and USPAP Standards Rules: 1-4(b)(i) & 2-2(b)(viii), 1-4(b)(ii) & 2-2(b)(viii), 1-1(a) & 1-4(b), 1-4(a) & 2-2(b)(viii), 1-1(a) & 1-4(a), 1-5(a) & 2-2(b)(viii), 1-1(b), 1-1(c), and 2-1(a).
3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making material misrepresentations and omissions of material facts.

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent shall:

- a. Have his certification suspended for twelve months with the suspension being fully probated under the following conditions:
  - i. During the entire twelve-month probation period Respondent shall submit on a form prescribed by the Board, an appraisal experience log to the Board every three months. The log shall detail all real estate appraisal activities he has conducted during the previous three-month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting that the log is true, complete

and fully accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments he performs during the course of his period of probation within twenty days of notice of such request;

- ii. Respondent shall timely remit payment of any administrative penalty and timely complete all of the remedial coursework required in this Order;
- b. Attend and complete a minimum, 15 classroom-hour course in USPAP;
- c. Attend and complete a minimum, 15 classroom-hour course in the Sales Comparison Approach;
- d. Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies;
- e. Pay to the Board an administrative penalty of \$<sup>1,000.00</sup>~~1,000.00~~, the payment of which is hereby probated under the condition that Respondent comply with all other terms of this Agreed Final Order; and; and,
- f. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

**ALL CLASSES** required by this Agreed **NINE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the nine-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for certification.

Payment of any **ADMINISTRATIVE PENALTY** must be by certified funds, and must be tendered within **TWENTY DAYS** of the date of this Agreed Final Order.


Failure to timely comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent as provided for by TEX. OCC. CODE § 1103.518, including but not limited to possible revocation of the above-noted probation.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published in the Board's newsletter and/or on the Board's web site.

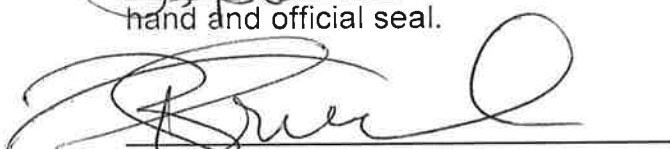
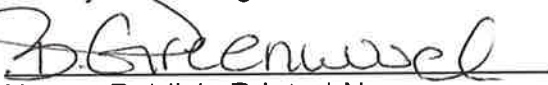
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

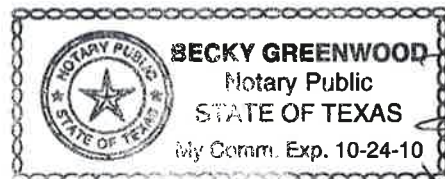
Signed this 3 day of September, 2008.

  
JOHN DALE MCCUISTION

  
MARK FOSTER, ATTORNEY FOR  
RESPONDENT


SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 3 day of September, 2008, by JOHN DALE MCCUISTION, to certify which, witness my hand and official seal.

  
Notary Public Signature  
  
Notary Public's Printed Name



(John SRS only)

Signed by the Commissioner this 17<sup>TH</sup> day of OCTOBER, 2008.

  
Timothy R. Irvine, Commissioner  
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 17<sup>TH</sup> day of OCTOBER, 2008.

  
Clinton P. Sayers, Chairperson  
Texas Appraiser Licensing and Certification Board